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No. 03-460

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In The Supreme Court of the United States

FERNAND L. LAUDUMIEY, III and DENNIS S. MANN,

Petitioners,

versus

LOUISIANA ATTORNEY DISCIPLINARY BOARD,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of Louisiana

OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Must the Louisiana Attorney Disciplinary Rules and Procedures which cover the disbarring of attorneys comply with both procedural and substantive due process?

1. Are the notice requirements of procedural due process infringed by application of permanent disbarment rules where permanent disbarment was not a penalty when Petitioners wrongfully influenced prospective Grand Jury witnesses?

2. Does "fundamental fairness" and "fair warning" require that the punishment of permanent disbarment be known at the time of wrongful conduct?

3. Does the Louisiana unitary system of lawyer discipline violate the requirements of an impartial tribunal by its combination of prosecutorial and adjudicatory functions?

4. Must a lawyer be disbarred upon conviction beyond a reasonable doubt or may lesser standards: "clear and convincing evidence," "moral fitness to practice law" and "fitness to practice law" suffice as adequate standards free of vagueness?

II. May Louisiana's new Supreme Court Rules providing for a penalty of permanent disbarment be applied retroactively without violating the constitutional prohibition against state *ex post facto* laws?

PARTIES

The parties in this Court and the court below are as follows:

Petitioners: Fernand L. Laudumiey, III and Dennis S. Mann were the respondents before the Louisiana Attorney Disciplinary Board and in the Supreme Court of Louisiana.

Respondent: The Office of the Disciplinary Counsel prosecuted the petitioners before the Louisiana Attorney Disciplinary Board and in the Supreme Court of Louisiana. The Louisiana Attorney Disciplinary Board was not a party to the proceeding in the Supreme Court of Louisiana.

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OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

This court should deny the former lawyers' petition for a writ of certiorari. The Louisiana Supreme Court permanently disbarred them after federal authorities caught them asking witnesses to lie to a federal grand jury – conduct that resulted in their felony conviction for violation of 18 USC §1512(b)(1) & (2) (obstruction of justice – witness tampering).

Their petition does not assert that the Louisiana Supreme Court's decision conflicts with any decisions of this court, of a federal court of appeals, or of the highest court of another state. This case does not raise any federal issues of broad applicability. In fact, most of the former lawyers' claims effect only a small group of Louisiana lawyers who committed significant violations of Louisiana's attorney disciplinary rules ("disciplinary rules") in a narrow time frame.

JURISDICTION

The respondent agrees that this Court has jurisdiction under 28 USC §1257 to review the 27 June 2003 ruling of the Supreme Court of Louisiana.

STATEMENT OF THE CASE

A. Parties.

The petitioners ("former lawyers") are:

1. Fernand L. Laudumiey, III; and

2. Dennis S. Mann.

The respondent is the Office of the Disciplinary Counsel of the Louisiana Attorney Disciplinary Board.

B. Facts and procedural history.

The statement of this case and its procedural history are fully and clearly set out in the Louisiana Supreme Court's opinion reproduced at Petitioners' Appendix A.

The respondent makes an observation about the former lawyers' statement of the case. The former lawyers state that they "acted improperly relative to prospective witnesses before a federal grand jury".[1] That is a euphemism for asking witnesses to lie to the grand jury.[2] The specific details of the former lawyers' conduct are relevant to the issue of whether they have standing to raise some of their vagueness challenges. The Louisiana Supreme Court referred to and considered the factual basis submitted in support of the former lawyers' guilty pleas in their federal criminal case. That factual basis is attached as Appendix A to this opposition.

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[1] Petition, p. 2.

[2] App. A, p. 3a-4a; *In re Laudumiey*, 2003-0234, pp. 3-4 (La. 6/27/03), 849 So.2d 515, 518.

REASONS FOR DENYING THE WRIT

I. DUE PROCESS.

The former lawyers' due process challenges to their disbarment do not merit this court's attention. The Louisiana Supreme Court's decision does not conflict with any decision of this Court, of a federal court of appeals, or of the highest court of another State.[3] Their due process challenges do not present important questions of federal law.[4] Instead, their claims lack arguable merit, they lack standing to raise some of their due process claims, and their arguments ignore the record.

A. Retroactive application of the permanent disbarment rule to their conduct.

The former lawyers assert that the Louisiana Supreme Court violated their 14th Amendment Due Process rights by applying a "new" permanent disbarment rule to them. They assert they had no notice at the time they committed their felonies that they might face permanent disbarment.

First, the former lawyers' argument lacks merit because permanent disbarment is not a "new" possible sanction. The possible sanctions available to the Louisiana Supreme Court in attorney disciplinary cases are a matter of Louisiana law. This court is bound to accept the interpretation of Louisiana law by the Supreme Court of

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[3] Supreme Court Rule 10(b) & (c).

[4] Supreme Court Rule 10(c).

Louisiana (the highest court of the State).[5] In the former lawyers' disciplinary proceeding, the Louisiana Supreme Court expressly held that permanent disbarment is not a "new" sanction:[6]

> Given this court's absolute discretion over readmission, it is beyond dispute that this court has always had the unfettered authority to refuse readmission to disbarred attorneys, including the right to do so on a permanent basis.
>
> Thus, it is clear the amendments to Supreme Court Rule XIX, § 10(A) and § 24(A) do not represent a substantive change to the bar disciplinary rules, nor do they result in the adoption of a new sanction which did not previously exist. Rather, these amendments simply represent a procedural change to Supreme Court Rule XIX in order to recognize a power this court has always possessed.

Second, the record contradicts the former lawyers' lack of prior notice claim. The Louisiana Supreme Court, citing a federally recorded conversation involving the former lawyers, found that at the time they committed the underlying federal criminal offence they believed (incorrectly) that the revised disbarment rule was already in effect.[7] Actual knowledge of a threat of permanent disbarment did not deter the former lawyers from committing the crime.

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[5] *Hortonville Joint School Dist. No. 1 v. Hortonville Educ. Ass'n*, 426 U.S. 482, 488, 96 S.Ct. 2308, 2312, 49 L.Ed.2d 1 (1976).

[6] App. A, p. 12a; *In re Laudumiey*, p. 10, 849 So.2d at 522.

[7] App. A, p. 11a, fn. 11.

Third, the former lawyers' citation to *In re: Ruffalo*[8] is misplaced. *Ruffalo* held that an attorney is entitled to notice of the charges against him prior to the disciplinary hearing.[9] It is undisputed that on 22 August 2001 the Office of Disciplinary Counsel filed a supplemental and amending formal charge against each former lawyer, which sought permanent disbarment[10] and that the hearing committee held the hearing over 3 months later on 7 December 2001.[11] Clearly, the former lawyers had the pre-hearing notice of the charges against them required by *Ruffalo*.

B. Fair warning.

The former lawyers allege that permanent disbarment violated their 14th Amendment Due Process rights because they did not have "fair warning" at the time they committed their felonies that they could be permanently disbarred.

As with their retroactivity argument, this argument is foreclosed by the fact that permanent disbarment was not a "new" possible sanction but, instead, is a power the Louisiana Supreme Court "has always possessed".[12] Further, at the time petitioner Mann committed the underlying federal criminal offence he believed (incorrectly) that the revised disbarment rule was already in effect.[13]

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[8] 390 U.S. 544, 88 S.Ct. 1222, 20 L.Ed.2d 117 (1968).

[9] 390 U.S. at 550, 88 S.Ct. at 1226.

[10] App. A, p. 5a; Petition, p. 3.

[11] App. C, p. 34a (This matter was heard on Friday, December 7, 2001 . . .).

[12] App. A, p. 12a.

[13] App. A, p. 11a, fn. 11.

C. Impartial tribunal.

The former lawyers specifically disclaim any actual bias on the part of anyone involved in their attorney disciplinary proceeding.[14] Instead, the former lawyers assert that mere "appearance" of unfairness violated their due process rights, even in the total absence of any actual unfairness.

First, the former lawyers waived this argument because they did not seek to recuse any of the members of the Louisiana Supreme Court. This is particularly applicable to the 4 current members of the Louisiana Supreme Court who in 1996 approved the Disciplinary Board's appointment of Charles B. Plattsmier as Disciplinary Counsel.[15] If there was a due process problem with any of these justices sitting on the former lawyers' case, their recusal could have cured it.

Second, their argument proves both too little and too much. Their argument fails to show that there is any due process violation in the Louisiana attorney disciplinary structure. There is no "appearance" problem with the Louisiana Supreme Court appointing a person or board to receive evidence and make proposed findings and recommendations back to it. Magistrate judges perform the same functions for federal district courts.[16] Special masters

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[14] "Counsel is not accusing anyone of unfairness". Petition, p. 12.

[15] Chief Justice Calogero and Justices Kimball, Victory, and Johnson.

[16] 28 USC §636(b)(1)(B).

perform the same functions for this Court.[17] There is no "appearance" problem with the Louisiana Supreme Court doing the same thing.

There is no "appearance" problem with the structure of the Louisiana Attorney Disciplinary Board. The Disciplinary Board is divided into 2 separate committees: the Adjudicative Committee and the Administrative Committee.[18] The Administrative Committee appoints the hearing committees – 3 member panels that conduct hearing into formal charges.[19] The separate Adjudicative Committee reviews the actions of the hearing committees.[20] Members of the Administrative Committee may not participate in or vote on matters involving appellate review functions of the Adjudicative Committee.[21]

There is no substantial "appearance" problem with the fact that the Louisiana Supreme Court must approve the appointment of the Chief Disciplinary Counsel.[22] The power to prosecute attorney disciplinary violations must rest somewhere. The Louisiana Supreme Court has "exclusive and plenary power to define and regulate all

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[17] *See*: *Alaska v. U.S.*, 531 U.S. 941, 121 S.Ct. 337, 148 L.Ed.2d 271 (2001). *See also*: *Nixon v. U.S.*, 506 U.S. 224, 250, 113 S.Ct. 732, 746, 122 L.Ed.2d 1 (1993) (federal courts have appointed special masters and other factfinders "[f]rom the commencement of our Government"), citing, *Ex parte Peterson*, 253 U.S. 300, 312, 40 S.Ct. 543, 547, 64 L.Ed. 919 (1920).

[18] La.Sup.Ct. Rules, Rule 19, §2(G).

[19] La.Sup.Ct. Rules, Rule 19, §2(G)(3)(a) and §3.

[20] La.Sup.Ct. Rules, Rule 19, §2(G)(2).

[21] La.Sup.Ct. Rules, Rule 19, §2(G) (unnumbered final sentence).

[22] La.Sup.Ct. Rules, Rule 19, §2(G)(1)(b) and §4(A).

facets of the practice of law" in Louisiana,[23] including the admission of attorneys to the bar, the professional responsibility and conduct of lawyers, and the discipline, suspension and disbarment of lawyers.[24] As a result, the Louisiana Supreme Court must make the determination of where to vest the prosecutorial function. Neither the executive nor legislative branches of Louisiana government have that power.

In Louisiana prior to 1990 the Louisiana State Bar Association (LSBA) prosecuted attorney disciplinary complaints. The former lawyers assert that the pre-1990 system did not suffer from the alleged "merger" problem. Their distinction does not withstand scrutiny.

Prior to 1990, Louisiana's attorney disciplinary rules vested the prosecutorial function in the LSBA because that is where the Louisiana Supreme Court chose to place it, not because of any independent or inherent power in the LSBA. For purposes of the former lawyers' merger argument, the current system is as "unitary" as the former system that they admit was constitutional.

The Disciplinary Rules create a significantly independent Disciplinary Counsel's Office – and there is nothing in the record to show that this independence is a sham. Although the Louisiana Supreme Court approved Plattsmier's appointment as Chief Disciplinary Counsel, there is no evidence in the record that the Supreme Court

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[23] *Bester v. Louisiana Supreme Court Committee on Bar Admissions*, 2000-1306, p. 3 (La. 2/21/01), 779 So.2d 715 (defining plenary as "full, entire, complete, absolute, perfect, unqualified").

[24] *Succession of Wallace*, 574 So.2d 348 (La. 1991).

actively manages Plattsmier's office on a day-to-day basis. Further, the Disciplinary Counsel's principal office is in Baton Rouge while the Louisiana Supreme Court sits in New Orleans. Finally, as noted above, only 4 of the 7 justices who heard the former lawyers' case were on the Louisiana Supreme Court when it approved Plattsmier's appointment in 1996.[25]

D. Vague standards.

1. Burden of proof.

The former lawyers assert that due process requires that an attorney disciplinary charge must be proved beyond a reasonable doubt, rather than by clear and convincing evidence as required by the Louisiana rules.[26]

First, they cite no authority for this novel proposition. The case they cite – *In re: Winship*[27] – holds that the "beyond a reasonable doubt" standard applies in juvenile delinquency adjudications (an unremarkable holding given that delinquency adjudications routinely involve incarceration). *Winship* simply does not stand for the proposition for which the former lawyers cite it nor does it inform the burden of proof analysis in this state attorney discipline matter.

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[25] *See*: *Kugler v. Helfant*, 421 U.S. 117, 128, 95 S.Ct. 1524, 1532, 44 L.Ed.2d 15 (1975).

[26] La.Sup.Ct. Rules, Rule 19, §18(C) (Standard of Proof. Formal charges of misconduct . . . shall be established by clear and convincing evidence.).

[27] 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970).

Second, the former lawyers lack standing to assert this issue because its resolution will not change the result in this case. The Louisiana Supreme Court found that as a result of the federal criminal conviction, the former lawyers' guilt of the underlying conduct had been proved beyond a reasonable doubt.[28] Proof meeting that standard necessarily means that there was proof on the somewhat lesser standard of "clear and convincing evidence". For the same reason, their vagueness challenge to the "clear and convincing evidence" standard is not appropriate for review.

2. Vagueness challenges to "moral fitness necessary to practice law" and "fitness as lawyers".

The former lawyers make a general assertion that the terms "moral fitness necessary to practice law" and "fitness as lawyers" are unconstitutionally vague. This assertion lacks merit and it is doubtful that the former lawyers have standing to raise it.

First, the former lawyers' string citation of this court's vagueness cases[29] is unenlightening. None of those cases deal with lawyer discipline. None of those cases deal with the challenged phrases (or any similar phrase). In fact, the former lawyers cite no cases from any court that have ever held the challenged phrases to be unconstitutionally vague.

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[28] App. A, p. 16a; *In re Laudumiey*, p. 14, 849 So.2d at 524.

[29] Petition, p. 13.

Second, the former lawyers lack standing to bring this challenge because they fail to argue how these terms are vague as to the specific conduct for which they were disciplined. The former lawyers do not assert that the challenged rules restrict their freedom of expression. Accordingly, this court reviews the challenged rules less strictly than if the rules inhibited 1st Amendment rights.[30]

Vagueness challenges to statutes that do not involve 1st Amendment freedoms are examined in the light of the facts of the case at hand.[31] A person who engages in conduct that a law clearly proscribes cannot complain of the vagueness of the law as applied to the conduct of others.[32] A criminal statute is vague if it "fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute".[33]

Assuming for argument that the terms "moral fitness necessary to practice law" and "fitness as lawyers" might have some play at the margins, this is assuredly not such a case. These former lawyers asked witnesses to lie to a federal grand jury. As the Louisiana Supreme Court held:

> [The former lawyers'] convictions are particularly egregious because the investigation they sought

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[30] *Kolender v. Lawson*, 461 U.S. 352, 358, n. 8, 103 S.Ct. 1855, 1859, 75 L.Ed.2d 903 (1983), citing, *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 499, 102 S.Ct. 1186, 1193, 71 L.Ed.2d 362 (1982).

[31] *Hoffman Estates*, 455 U.S. at 495, n. 7, 102 S.Ct. at 1191.

[32] *Hoffman Estates*, 455 U.S. at 495, 102 S.Ct. at 1191.

[33] *Papachristou v. City of Jacksonville*, 405 U.S. 156, 162, 92 S.Ct. 839, 843, 31 L.Ed.2d 110 (1972).

> to impede related directly to runner-based solicitation in the legal profession.

It strains credulity to believe that either of these former lawyers did not have "fair notice" that asking witnesses to lie to a federal grand jury impacts on his "moral fitness necessary to practice law" and "fitness as a lawyer".[34] The Louisiana disciplinary rules clearly proscribed the former lawyers' felonious conduct. Therefore, they lack standing to assert their vagueness challenge.

II. THE FORMER LAWYERS' *EX POST FACTO* CHALLENGE DOES NOT MERIT THIS COURT'S ATTENTION.

The former lawyers' *ex post facto* challenge to their disbarment does not merit this court's attention. The Louisiana Supreme Court's decision does not conflict with any decision of this Court, of a federal court of appeals, or of the highest court of another State.[35] Their *ex post facto* challenge is not an important question of federal law[36] because it does not have broad applicability. Rather, it addresses only the severity of their sanction: permanent disbarment as opposed to disbarment with the ability to apply for discretionary readmission after five years. Their *ex post facto* claim applies only to the small number of

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[34] By comparison, one of the requirements for admission to this Court's Bar is that the applicant "is of good moral and professional character". Supreme Court Rule 5.1 & 5.2. An applicant to the Bar of a federal court of appeals must also be of "good moral and professional character". FRAP Rule 46(a)(1).

[35] Supreme Court Rule 10(b) & (c).

[36] Supreme Court Rule 10(c).

Louisiana lawyers who committed serious misconduct prior to 1 August 2001. Further, their challenge lacks arguable merit and ignores the record.

First, the former lawyers correctly note that the *Ex Post Facto* Clause[37] prohibits a state from enacting a "law that aggravates a crime, or makes it greater than it was, when committed".[38] However, they fail to recognize that this rule does not apply to their case because permanent disbarment is not a "new" sanction.

As stated above, the possible sanctions available to the Louisiana Supreme Court in attorney disciplinary cases is a matter of Louisiana law and this court is bound to accept the Supreme Court of Louisiana's interpretation of Louisiana law.[39] In rejecting the former lawyers' *ex post facto* argument, the Louisiana Supreme Court expressly held that permanent disbarment is not a "new" sanction:[40]

> Given this court's absolute discretion over readmission, it is beyond dispute that this court has always had the unfettered authority to refuse readmission to disbarred attorneys, including the right to do so on a permanent basis.
>
> Thus, it is clear the amendments to Supreme Court Rule XIX, § 10(A) and § 24(A) do not represent a substantive change to the bar disciplinary

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[37] U.S. Const., Art. I, §10, cl. 1.

[38] *Stogner v. California*, ___ U.S. ___, ___, 123 S.Ct. 2446, 2450, 156 L.Ed.2d 544 (2003), citing, *Calder v. Bull*, 3 U.S. (3 Dall.) 386, 390, 1 L.Ed. 648 (1798).

[39] *Hortonville*, 426 U.S. at 488, 96 S.Ct. at 2312.

[40] App. A, p. 12a; *In re Laudumiey*, p. 10, 849 So.2d at 522.

> rules, nor do they result in the adoption of a new sanction which did not previously exist. Rather, these amendments simply represent a procedural change to Supreme Court Rule XIX in order to recognize a power this court has always possessed.

The former lawyers' *ex post facto* argument asks this court to reverse the Louisiana Supreme Court's interpretation of Louisiana law that held the court "has always possessed" the power to permanently disbar a Louisiana lawyer. To do so would require this court to reverse its *Hortonville* decision, to displace a state's highest court as the ultimate interpreter of state law, and instead to install this court as the ultimate interpreter of state law. The former lawyers cite no authority for such a tectonic shift in bedrock federalism principles.

Second, the former lawyers' "fair warning" claim is misplaced. This court held in *Rogers v. Tennessee*[41] that the "fair warning" concept is rooted in the Due Process Clause, not the *Ex Post Facto* Clause.

Third, the record contradicts the former lawyers' "fair warning" claim. The Louisiana Supreme Court, citing a federally recorded conversation involving the former lawyers, found that at the time they committed the underlying federal criminal offence they believed (incorrectly) that the revised disbarment rule was already in effect.[42] Actual knowledge of a threat of permanent disbarment did not deter them from committing the crime.

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[41] 532 U.S. 451, 459, 121 S.Ct. 1693, 1699, 149 L.Ed.2d 697 (2001).

[42] App. A, p. 11a, fn. 11.

Fourth, the former lawyer's argument is incredible. They assert that the threat of permanent disbarment would have deterred them from their felonious conduct when they were not deterred by the threat of federal prison (and of the other incidents of a felony conviction such as losing the right to vote and to own firearms) and of disbarment for at least 5 years with only a hope of discretionary readmission.

Fifth, the former lawyers' *ex post facto* claim is a complaint about form over substance. Under this court's caselaw, if a state enacts a law prohibiting convicted felons from practicing medicine, the *Ex Post Facto* Clause does not prevent application of that law to a person who committed a felony before the new law was enacted.[43] Accordingly, consistent with the *Ex Post Facto* Clause as interpreted by this court in *Hawker*, the Louisiana Supreme Court could have:

- disbarred Laudumiey and Mann with the ability to seek readmission after 5 years;
- enacted a new rule barring all convicted felons from admission to the Louisiana Bar; and
- applied that new rule to any subsequent petition for readmission filed by Laudumiey or Mann.

That result would be consistent with what actually occurred in this case.

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[43] *Hawker v. People of New York*, 170 U.S. 189, 18 S.Ct. 573, 42 L.Ed. 1002 (1898).

Accordingly, the former lawyers fail to show that this court should exercise its discretion and hear their *ex post facto* challenge to their disbarment.

III. THE FORMER LAWYERS' CHALLENGES TO THEIR SPECIFIC SANCTION OF PERMANENT DISBARMENT ARE NOT RIPE.

The majority of the former lawyers' claims relate to their sanction of permanent disbarment. They admit that the Louisiana Supreme Court could have disbarred them. However, they assert that they should have the opportunity to apply for readmission after 5 years. These claims are not ripe for review.

Ripeness "is peculiarly a question of timing".[44] No one knows what the future may bring. The former lawyers' claim will be ripe only if they seek readmission 5 years from now, they are otherwise eligible for readmission, and if the Louisiana Supreme Court denies their application based on the permanent disbarment rule. At that time there will be a sharply focused case and controversy based upon an actual implementation of their permanent disbarment.[45]

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[44] *Anderson v. Green*, 513 U.S. 557, 559, 115 S.Ct. 1059, 1060, 130 L.Ed.2d 1050 (1995).

[45] *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43, 60, 113 S.Ct. 2485, 2497, 125 L.Ed.2d 38 (1993) (an alien's challenges to new INS regulations are not ripe until the alien's application for a change in status is denied based upon the new regulations).

As a result, the former lawyers' claims concerning their sanction are not yet ripe at this time.

CONCLUSION

This Court should deny Laudumiey and Mann's petition for a writ of certiorari to the Supreme Court of Louisiana.

Respectfully submitted,

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EXHIBIT ODC #15

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA	*	CRIMINAL NO. 01-14
v.	*	SECTION: "L"
DENNIS S. MANN	*	
FERNAND L. LAUDUMIEY, III	*	

* * *

FACTUAL BASIS

(Filed Mar. 14, 2001)

If called upon to try this case the government would prove at trial, among other things, the following:

Defendants Dennis S. Mann and Fernand L. Laudumiey were attorneys licensed in the State of Louisiana, and practiced general civil law. Mann and Laudumiey employed Ernest Aiavolasiti and Michael A. Palmisano, Jr. as legal assistants. While so employed with Mann and Laudumiey, and with their full knowledge, Aiavolasiti and Palmisano used runners to solicit personal injury cases.

In June 2000, Aiavolasiti and Palmisano were subpoenaed, and later appeared as witnesses, before a federal grand jury investigating fraud and corruption in the legal and medical professions engaged in personal injury litigation. A grand jury is an official proceeding under Title 18, United States Code, Section 1512. Prior to their appearance in the grand jury, however, Aiavolasiti and Palmisano had a meeting with Laudumiey on June 13, 2000.

They met again with both Laudumiey and Mann on June 15, 2000.

On June 13, 2000, Aiavolasiti and Palmisano met Laudumiey at Lakeview Harbor Restaurant in New Orleans, Louisiana. Aiavolasiti and Palmisano were consensually wearing recording and transmitting devices supplied by special agents of the Federal Bureau of Investigation (FBI). When Aiavolasiti and Palmisano disclosed to Laudumiey that they had been subpoenaed to appear before a federal grand jury, Laudumiey read the grand jury subpoenas and stated, "This changes everything." Laudumiey insisted that they have another meeting.

Accordingly, on June 15, 2000, a second meeting took place at Lakeview Harbor Restaurant. Present were Mann, Laudumiey, Aiavolasiti, and Palmisano. Again, Aiavolasiti and Palmisano consensually wore transmitting and recording devices supplied by special agents of the FBI. Laudumiey suggested almost immediately that they go to his house at 998 Amethyst Street in New Orleans. FBI and the Internal Revenue Service (IRS) agents surveilled the defendants leaving the restaurant with Aiavolasiti and Palmisano and going to Laudumiey's house.

Immediately upon arriving at the house, Mann requested everyone strip their clothes off to ensure no one was wearing recording devices. Upon redressing, a lengthy conversation of approximately two hours ensued concerning Aiavolasiti and Palmisano's upcoming testimony before the grand jury. Repeatedly during the conversation, Mann and Laudumiey sought to influence Aiavolasiti and Palmisano's grand jury testimony. Specifically, Mann and Laudumiey encouraged Aiavolasiti and Palmisano to testify falsely to the grand jury. For example, Mann made

the statement, "Let me tell you, how about if you said something like this, tell 'em [*i.e.* the grand jury] you paid runners to bring in cases but don't tell 'em that the lawyers knew anything about it." Laudumiey agreed that Aiavolasiti and Palmisano should make this false testimony to the grand jury. In fact, as described above Mann and Laudumiey knew Aiavolasiti and Palmisano were using runners to bring in cases.

At another part of the conversation, Mann again urges Aiavolasiti and Palmisano to conceal from the grand jury that he and Laudumiey knew anything about using runners. Mann went on to tell them that he was less concerned about going to jail, than he was about losing his livelihood. During another part of the conversation Laudumiey instructed Aiavolasiti and Palmisano to tell the grand jury that they had paid runners while working for another lawyer's office, but not while working for Laudumiey and Mann.

In an effort to convince Aiavolasiti and Palmisano to testify falsely before the grand jury, Mann compared the instant investigation to the recent Edwin Edwards trial in Baton Rouge. He attempted to convince them that this investigation was not as strong as the Edwards case because it had no tapes or surveillance and that it was merely based on "words of like people . . . that are delivery boys." During the meeting, both Mann and Laudumiey repeatedly attempted to influence Aiavolasiti and Palmisano's grand jury testimony.

At the conclusion of the meeting, Mann and Laudumiey gave Aiavolasiti and Palmisano $2,000 and told them there was more if they needed it, ostensibly to

hire an attorney. Finally, both defendants asked Aiavolasiti and Palmisano to contact them after they appeared before the grand jury.

The above evidence comes from an investigation done by special agents of the Federal Bureau of Investigation and the Internal Revenue Service, a federal grand jury investigation, consensual tape recordings, and the admissions of the defendants Laudumiey and Mann.

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